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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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No. 956

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ROBERT H. MEADE,

*Petitioner,*

*vs.*

THE UNITED STATES

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PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CLAIMS.

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GEORGE R. SHIELDS,  
HERMAN J. GALLOWAY,  
JOHN W. GASKINS,  
FRED W. SHIELDS,  
*Counsel for Petitioner.*



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The petitioner, Robert H. Meade, prays that a writ of certiorari issue to review the judgment of the Court of Claims in the above case.

**Opinion Below.**

The opinion of the Court of Claims is not yet officially reported.

**Jurisdiction.**

The judgment of the Court of Claims was entered February 1, 1943. The jurisdiction of this Court is invoked under Section 3(b) of the Act of February 13, 1925, as amended.

### Question Presented.

Whether a lieutenant of the Staff Corps of the United States Navy, whose total commissioned service equals that of a lieutenant commander of the line of the Navy, is entitled to receive the pay of the fourth pay period, which is paid to the lieutenant commander, as prescribed by Section 1 of the Act of June 10, 1922, c. 212, 42 Stat. 625, 626, as amended by the Act of May 23, 1928, c. 715, 45 Stat. 719, 720.

### Statute Involved.

Section 1 of the Act of June 10, 1922, as amended by the Act of May 23, 1928, supra, provides in part as follows:

“The pay of the fourth period shall be paid to \* \* \* lieutenant commanders of the Navy \* \* \* who have completed fourteen years service \* \* \* and to lieutenant commanders and lieutenants of the Staff Corps of the Navy \* \* \* whose total commissioned service equals that of lieutenant commanders of the line of the Navy drawing the pay of this period.”

### Statement.

The plaintiff was appointed a midshipman, United States Navy, on June 16, 1922; was commissioned ensign from June 3, 1926, and since that day has served continuously as a commissioned officer of the United States Navy, attaining his present commission of lieutenant, Civil Engineer Corps, on February 7, 1938, to rank from June 1, 1936.

He compares his commissioned service with that of Lieutenant Commander Robert Stanley Robertson, Junior, United States Navy, Retired, who has served in the Navy as follows:

- 1905, June 15. Appointed Midshipman.
- 1911, June 19. Commissioned Ensign from June 5, 1911.

1914, August 14. Commissioned regular Lieutenant, junior grade, from June 5, 1914.

1915, September 22. Transferred to the retired list from September 19, 1915, under Section 1453, Revised Statutes.

1916, January 28. Recalled to active duty, reporting February 15, 1916.

1916, July 5. Detached from duty, reporting home July 14, 1916.

1917, February 23. Recalled to active duty, reporting March 4, 1917.

1918, September 6. Temporarily appointed Lieutenant Commander on the retired list from July 1, 1918, accepting appointment and executing oath of office September 9, 1918.

1918, November 12. Appointed Lieutenant on the retired list from July 1, 1918, accepting appointment and executing oath of office December 5, 1918.

1919, March 14. Temporary appointment as Lieutenant Commander revoked, reverting to status as Lieutenant on the retired list of the Navy.

1919, March 15. Relieved from all active duty by order of March 7, 1919.

1924, November 29. Ordered to active duty, reporting December 2, 1924.

1928, May 28. Commissioned Lieutenant Commander on the retired list to rank from April 26, 1928, accepting appointment and executing oath of office May 28, 1928.

1928, September 29. Detached from duty, relieved of all active duty, and ordered home, in accordance with orders of May 22, 1928, as modified July 2, 1928.

1939, October 16. Ordered to active duty, reporting October 18, 1939.

Lieutenant Commander Robertson has received the active duty pay and allowances of an officer of the fourth pay period since he reported for duty on October 18, 1939.

The petitioner has received only the pay and allowances of an officer of the third pay period since October 18, 1939, notwithstanding the fact that the total of his active commissioned service equals that of Commander Robertson.

The difference between the pay and allowances of an officer of the fourth pay period and the pay and allowances of an officer of the third pay period for the period from October 18, 1939, to December 31, 1939, is \$239.67. Petitioner's claim, however, is a continuing one.

Petitioner brought suit in the Court of Claims to recover the difference between the pay and allowances of an officer of the fourth pay period, and the pay and allowances of an officer of the third pay period, for the period from October 18, 1939, to date of judgment. The United States opposed on the ground that the petitioner's commissioned service was not comparable to that of Lieutenant Commander Robertson. The Court of Claims, Judge Madden dissenting, dismissed petitioner's petition, and entered judgment for the respondent.

#### **Specification of Errors to Be Urged.**

The Court of Claims erred:

1. In holding that a lieutenant of the Staff Corps of the United States Navy, whose active commissioned service equaled that of a lieutenant commander of the line of the United States Navy, drawing the pay of the fourth pay period, was not entitled to draw the pay and allowances of the same pay period.
2. In holding that active commissioned service performed by the petitioner could not be compared with that performed by a line officer, because the respective periods of service were not performed concurrently.
3. In entering judgment for respondent.

#### **Reasons for Granting Writ.**

1. This case presents an important question in the interpretation of the basic pay Act providing for and fixing the pay and allowances of the officers and men of the Armed



Services. The Act of June 10, 1922, *supra*, has been repealed and superseded by the Act of June 16, 1942, (Public Law No. 607, C. 413, 77th Cong. 2nd Sess.) which is now in effect. The 1942 Act provides that Acts or parts of Acts incorporating directly, by implication or by reference, the provisions of the Act of June 10, 1922, as amended, and not in conflict herewith, shall not be considered modified by the provisions of this Act. Therefore the Act of May 23, 1928, is still in effect, and the decision of the court below affects, and will continue to affect, the pay of every officer in the Staff Corps of the Navy. It is essential that the question here presented be authoritatively decided as soon as possible.

2. The language of Section 1 of the Act of June 10, 1922, as amended by the Act of May 23, 1928, *supra*, is clear and its meaning is unmistakable. It simply provides that the pay of the fourth period shall be paid to lieutenant commanders of the Navy who have completed fourteen years service, and to lieutenant commanders and lieutenants of the Staff Corps of the Navy, whose total commissioned service equals that of lieutenant commanders of the line of the Navy, drawing the pay of this period. The court below, has construed "total commissioned service" to mean "total comparable commissioned service". It is elementary that a Court, in interpreting a Statute must take the statute as it is written, and must not alter statutory words in the interest of the imagined intent. Cf. *Bate Refrigerating Co. v. Sulzberger*, 157 U. S. 1, 371; *United States v. Riggs*, 203 U. S. 136, 139.

As stated by Judge Madden in his dissenting opinion, the majority of the court below has so altered the meaning of the statute here involved as to make it provide that the pay of the fourth pay period should be given only to lieutenants of the Staff Corps of the Navy who have completed fourteen

years service. That, undoubtedly, is the practical effect of the decision of the majority of the court below. It is obvious that Congress did not so provide, and if it intended that result it could have said so without employing the involved language of the statute.

The court below has twice passed upon the question here presented. In the case of *Roggenkamp v. United States*, 76 C. Cls. 329, the plaintiff, an officer in the Staff Corps of the Navy, sought to compare his commissioned service with that of a retired officer of the line of the Navy. The court held that the statute did not intend a comparison of service which was not concurrent, or the comparison of an officer of the Staff on active service with an officer of the line on the retired list; the statute used the words "active commissioned service" and this excluded inactive service.

In *Marvin v. United States*, 78 C. Cls. 567, the plaintiff, a retired officer of the United States Coast Guard who had been recalled to active duty, sought to compare his active commissioned service with that of a lieutenant commander of the Navy on the active list. The court disregarded the fact that the service of the two officers had not been performed concurrently, and held that the plaintiff was entitled to compare the total of his active commissioned service, whether performed before or after retirement, with that of the officer of the Navy who had served continuously on active duty.

The facts in the present case are substantially similar to those in the *Marvin* case, *supra*, except that the position of the officers is reversed. Here the petitioner is an officer on the active list, who seeks to compare his service with that of an officer recalled to active duty.

The meaning of the statute here is clear and unmistakable. The majority of the court below has failed to give effect to its plain meaning, and it is incumbent on this court to correctly interpret the statute.

**Conclusion.**

It is respectfully submitted that, for the reasons stated, this petition for a writ of certiorari should be granted.

GEORGE R. SHIELDS,  
HERMAN J. GALLOWAY,  
JOHN W. GASKINS,  
FRED W. SHIELDS,  
*Attorneys for Petitioner.*

April, 1943.

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